

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JUNE M. DOMINO,	)	Case No.: 1:19-cv-01790-JLT-SKO
	)	
Plaintiff,	)	ORDER TO SHOW CAUSE WHY CLAIMS
	)	SHOULD NOT BE DISMISSED FOR LACK OF
v.	)	SUBJECT MATTER JURISDICTION
	)	
CALIFORNIA DEPARTMENT OF	)	FOURTEEN DAY DEADLINE
CORRECTION & REHABILITATION;	)	
KATHLEEN ADDISON, in her official	)	(Doc. 42)
capacity as Secretary of The Department of	)	
Correction & Rehabilitation; DR.	)	
STEPHANIE NEUMANN BESE PSY.D., in	)	
her official capacity as Chief of Mental Health	)	
at the Central California Women's Facility	)	
(CCWF); and DOES 1-50 inclusive,	)	
	)	
Defendants.	)	

June Domino, proceeding *pro se* and *in forma pauperis*, filed the instant action on December 23, 2019. (Docs. 1-3.) On March 3, 2020, the Court screened and dismissed Plaintiff's complaint with leave to amend for failure to state a cognizable federal claim. (Doc. 8.) Plaintiff filed her First Amended Complaint on March 24, 2020. (Doc. 10.) On May 8, 2020, Plaintiff's FAC was screened and dismissed for failure to state any cognizable federal claims. (Doc. 11.) Plaintiff was granted one final opportunity to amend her complaint. (*Id.* at 2, 13.) Plaintiff filed her Second Amended Complaint on November 24, 2021 (Doc. 42.) Pending before the Court is Defendants' motion to dismiss

1 Plaintiff's SAC, filed on February 28, 2022. (Doc. 56.) The parties have fully briefed the motion.  
2 (Docs. 65, 66.) Upon review of the papers, the Court finds several critical issues warranting Plaintiff's  
3 response.

4 Defendants first argue, and the Court previously held, that 42 U.S.C. § 1981 does not provide a  
5 cause of action against state agencies. (Doc. 11 at 9-10; Doc. 56-1 at 5-6.) Plaintiff did not address this  
6 issue in her opposition. (*See* Doc. 65.) Defendants also raise two arguments for the first time in their  
7 reply. First, Defendants argue that Plaintiff's claim under 42 U.S.C. § 1983 must be dismissed because  
8 neither the State nor its officials in their official capacities are "persons" for purposes of section 1983  
9 liability and as such, they are entitled to sovereign immunity under the Eleventh Amendment. (Doc. 66  
10 at 3.) Defendants also contend that Plaintiff's ADEA claim is barred by the doctrine of sovereign  
11 immunity. (*Id.* at 4.)

12 Plaintiff's SAC asserts official capacity claims against California Department of Correction  
13 and Rehabilitation; Kathleen Addison<sup>1</sup>, in her official capacity as Secretary of CDCR; and Dr.  
14 Stephanie Neumann Bese Psy.D., in her official capacity as Chief of Mental Health at the Central  
15 California Women's Facility. (Doc. 42 at ¶¶ 5-7.) In its first screening order, the Court clarified that  
16 the Eleventh Amendment bars suits against state agencies but not suits seeking damages against  
17 officials/employees in their individual capacities. (Doc. 8 at 4.)

18 In the interest of fairness, the Court grants Plaintiff one opportunity to explain why her claims  
19 are not barred by the Eleventh Amendment. Plaintiff **SHALL** file, no later than **November 8, 2022**, a  
20 response addressing the issues referenced in this order as to **each Defendant separately**. Plaintiff's  
21 response is not to exceed 10 pages. Failure to comply with this order will result in summary dismissal  
22 of these claims without further notice.

23  
24 IT IS SO ORDERED.

25 Dated: **October 24, 2022**

  
UNITED STATES DISTRICT JUDGE

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27  
28 <sup>1</sup> Defendant's correct name is Kathleen Allison. *About CDCR*, CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION, <https://www.cdcr.ca.gov/about-cdcr/secretary/> (last visited  
October 24, 2022).